



STATE OF INDIANA

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July 18, 2012

Keith Ware
DOC 5265
One Park Row
Michigan City, 46306

Re: Formal Complaint 12-FC-159; Alleged Violation of the Access to Public Records Act by the Lake County Court Administrator

Dear Mr. Ware:

This advisory opinion is in response to your formal complaint alleging the Lake County Court Administrator ("Court") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Court. As of today's date we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that you have submitted a written request to the Court on May 31, 2012. As of June 18, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Court has not responded to your request in any fashion.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The Court is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Court's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request

is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, it is my opinion that if the Court failed to respond to your written request within seven (7) days of its receipt it violated the APRA.

Without the benefit of a response from the Court, it is unclear to me why your request was denied. The records you requested may very well be confidential or otherwise nondisclosable. However, under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1.

Because the Court has not provided a justification for withholding the records at issue here, it is my opinion that then it has failed to sustain its burden. If the Court cannot justify withholding the records under the APRA, I encourage the Court to release the records to you. To the extent the Court persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Court is in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

Based on the foregoing, it is my opinion that if the Court failed to respond to your written request within seven (7) days of its receipt, it violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Martin Goldman